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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/561,130	06/22/2007	Edgar Diessel	04DC001 WO	6101
71331 7590 11/19/2009 NIXON PEABODY LLP 300 S. Riverside Plaza, 16th Floor CHICAGO, IL 60606-6613				
EXAMINER LAUCHMAN, LAYLA G				
ART UNIT		PAPER NUMBER		
2877				
MAIL DATE		DELIVERY MODE		
11/19/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/561,130

Applicant(s)

DIESEL ET AL.

Examiner

L. G. Lauchman

Art Unit

2877

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12/16/05 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SI.08)
- _____ Paper No(s)/Mail Date 4/29/08

- 4) ☐ Interview Summary (PTO-413)
_____ Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Priority

Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Germany on 6/27/2003. It is noted, however, that applicant has not filed a certified copy of the German application (10328998.4) as required by 35 U.S.C. 119(b).

Specification

The preliminary amendment to the specification filed on 12/16/05 is improperly placed in the specification. The applicant is advised to revise the placement of the new paragraph, since the indicated "page 2, line 5" does not place the paragraph into proper location.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 25-43 are rejected under 35 U.S.C. 102(e) as being anticipated by Franzen et al (US 7,255,835) (hereinafter "Franzen").

As to Claim 25, Franzen teaches a method for analyzing a liquid sample comprising at least one analyte, the method comprising the acts of: aspirating the sample into a metering apparatus (col. 16, lines 22-27); metering the sample onto the measurement surface of an optical

element of an ATR apparatus via the metering apparatus (col.22, lines 11-16, lines 24-34); measuring the ATR-IR spectrum (col. 13, lines 16-24); and analyzing the ATR-IR spectrum with a calibration procedure for concentration determination of the analytes to be detected (col. 14, lines 43-59; and col. 5, line 56 – col. 6, lines 3), wherein the sample is dried on the measurement surface before the ATR-IR spectrum is measured (col. 52, lines 44-51).

As to claims 26 and 27, the sample is interstitial fluid, blood, serum, plasma, urine, saliva, sweat or lacrimal fluid (solutions containing proteins). The analyte is glucose, high-density lipoproteins (HDL), low-density lipoproteins (LDL), cholesterol, triglycerides, albumin, total protein, urea, uric acid, hemoglobin, creatinine or combinations thereof.

As to Claims 28 and 29, the NIR spectrum is measured in the wavenumber range of 800 to 14,000 cm^{-1} (col. 12, lines 57-59), 29. The method of claim 25, wherein the sample has a volume of 0.2 to 1000 nl (col. 17, lines 30-33).

As to Claim 30, the sample is applied to the measurement surface of the ATR apparatus as a drop sequence in several acts, each of the drop sequences including at least one drop and the sample being dried between the drop sequences (col. 18, lines 30-33).

As to Claims 31 and 32, the measurement surface is bounded by a frame on the optical element of the ATR apparatus (see Fig. 14 A, col. 52, lines 57-60), the metering apparatus is a piezo-driven dropper or a syringe-driven dropper (col. 17, lines 34-38).

As to Claim 33, the apparatus is mounted in an evacuable casing, the casing being equipped with an evacuation mechanism (col. 22, lines 35-38).

As to Claim 34, the apparatus further includes a blower and a feed line connected thereto, and at least one nozzle that is connected to the feed line and is directed towards the measurement surface of the optical element of the ATR apparatus (col. 52, lines 48-51).

As to Claim 35, the optical element of the ATR measurement apparatus is a prism, a planar waveguide or a plate waveguide, the optical element comprising diamond, silicon, zinc selenide or germanium (col. 52, lines 52-55).

As to Claims 42 and 43, the metering apparatus and the optical element of the ATR measurement apparatus are combined on a common substrate (see Fig14A).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 36-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franzen et al (US 7,255,835) (hereinafter "Franzen"), in view of Mantele et al (US 2006/0043301) hereinafter "Mantele").

Franzen teaches all as applied to claim 25, with the exception of the optical element of the ATR measurement apparatus is an optical fiber manufactured from chalcogenides or silver halides, the optical element of the ATR measurement apparatus is covered with a removable disposable film, the disposable film consists of polyethylene, the optical element of the ATR measurement apparatus is provided with a frame to bound the measurement surface, and the

apparatus further includes a digital camera to record an image of the sample. Mantele discloses (see Figs. 1 and 2) an infrared measuring device having an ATR body 12 (par 0082) made of polyethetlyne (see paragraph 0037), detector 6. It would be obvious to one of ordinary skill in the art at the time the invention was conceived to use the above mentioned types of the optical element in the invention of Franzen in order to improve similar devices by applying known techniques and features to yield predictable results.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to L. G. Lauchman whose telephone number is (571) 272-2418. The examiner's normal work schedule is 8:00am to 4:30pm (EST), Monday through Friday. If attempts to reach examiner by the telephone are unsuccessful, the examiner's supervisor Gregory J. Toatley, Jr. can be reached on (571) 272-2059, ext. 77.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application should be directed to the TC receptionist whose telephone number is (571) 272-1562.

/L. G. Lauchman/
Primary Examiner, Art Unit 2877

11/18/2009